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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; DA 13-332]

Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) addresses a petition for clarification and reconsideration, or in the alternative waiver, filed by the United States Telecom Association and CTIA – The Wireless Association. The Bureau also clarifies and waives certain aspects of the reporting requirements adopted in the USF/ICC Transformation Order for eligible telecommunications carriers relating to five-year build-out plans and broadband network testing.

DATES: Effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, except for the amendments made to § 54.313(a) in this document, which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date for that section.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; DA 13-332, adopted on March 5, 2013 and released on March 5, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center,

Room CY-A257, 445 12th Street, SW., Washington, DC 20554. Or at the following Internet address:
http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0305/DA-13-332A1.pdf.

I. INTRODUCTION

1. In the Order, the Bureau addresses a petition for clarification and reconsideration, or in the alternative waiver, filed by the United States Telecom Association (USTelecom) and CTIA – The Wireless Association (CTIA) (collectively, Petitioners). The Bureau clarifies and waives certain aspects of the reporting requirements adopted in the USF/ICC Transformation Order, 76 FR 73830, November 29, 2011, for eligible telecommunications carriers (ETCs) relating to five-year build-out plans and broadband network testing. The Bureau also clarifies and revises § 54.313(a) of the Commission’s rules accordingly.

2. In the USF/ICC Transformation Order, the Commission adopted several reforms to harmonize and update annual ETC reporting requirements. The Commission extended reporting requirements for voice service to all ETCs and adopted new reporting requirements to reflect new broadband obligations. Shortly after the USF/ICC Transformation Order was released, USTelecom filed a Petition for Reconsideration seeking reconsideration of, among other things, various of these reporting requirements. Specifically, USTelecom argued that the new ETC reporting requirements implemented in the USF/ICC Transformation Order were unduly burdensome and unnecessary, that they should be applied prospectively, and that the effective date of the reporting obligations should be delayed. In the Third Reconsideration Order, 77 FR 30904, May 24, 2012, the Commission granted in part and denied in part aspects of the USTelecom Petition for Reconsideration. The Commission granted USTelecom’s request to revise the filing deadline for § 54.313 annual reports from April 1 to July 1. The Commission denied USTelecom’s request to clarify that the Commission intended to preempt state reporting requirements pursuant to § 54.313, and the Commission also denied USTelecom’s request to exempt state-designated ETCs from the requirements in the USF/ICC Transformation Order. The Commission did not address other aspects of USTelecom’s initial Petition for Reconsideration in the Third Reconsideration Order.

II. DISCUSSION

3. In the USF/ICC Transformation Order, the Commission delegated to the Bureau the authority to revise and clarify rules as necessary to ensure that the reforms adopted in the USF/ICC Transformation Order are properly reflected in the rules. In this Order, the Bureau acts pursuant to this delegated authority to revise and clarify certain rules, and acts pursuant to authority delegated to the Bureau generally to clarify and waive certain rules relating to five-year plans and broadband performance testing.

A. Five-Year Build-Out Plans

4. Discussion. First, the Bureau clarifies that competitive ETCs whose support is being phased down do not have to file new five-year plans. The Commission required ETCs to file new five-year plans to account for new broadband obligations in a manner consistent with § 54.202(a)(1)(ii). But the Commission also exempted from new broadband obligations those competitive ETCs whose support is being phased down. Because the five-year plans are intended to reflect new broadband obligations, those competitive ETCs do not have to file such plans.

5. We underscore that competitive ETCs must continue to file annual updates on any five-year plan already filed with the Commission, and that competitive ETCs should comply with any other relevant state requirements, as stipulated in the Third Reconsideration Order. In the USF/ICC Transformation Order, the Commission found it “necessary and appropriate” to continue to receive annual reports from ETCs that have already filed five-year plans in order to “ensure the continued availability of high-quality voice services.” While competitive ETCs may have their support phased down, and aspects of their original five-year plans may change because of the reduction in support, there is significant value in those ETCs continuing to file annual updates to their respective five-year plans. Indeed, it would be appropriate for those ETCs to reflect any adjustments to their original five-year plans in the annual updates. These annual updates will assist the Commission in monitoring the impact of its universal

service reforms on competitive ETCs' provision of voice service, consistent with the requirements in the Third Reconsideration Order.

6. Second, the Bureau waives the requirement that price cap recipients of frozen support or incremental support file five-year plans by July 1, 2013. The Bureau finds that it is in the public interest to grant a limited waiver, at this time, of this aspect of the 2013 annual report for price cap recipients of frozen support or incremental support, so that carriers do not begin the process now of developing such plans without knowing which areas they will be serving in the future. Instead, price cap carriers that accept the offer of support will be required to file five-year plans in the 2014 annual report. When the Commission adopted the requirement that price cap ETCs file new five-year plans in 2013, it anticipated that the Bureau would adopt a forward-looking cost model by the end of 2012 for purposes of offering support to price cap carriers beginning January 1, 2013. In order for those carriers to develop a five-year plan, they first need to make the threshold decision of whether to make a state-level commitment. While the Bureau has made significant progress on the forward-looking cost model in recent months and expects to complete that work in the months ahead, until the cost model is adopted and incumbents have the opportunity to accept a state-level commitment, it does not serve the public interest to require the filing of five-year plans for this group of ETCs. The Bureau therefore grants a limited waiver from filing five-year plans to price cap recipients of frozen support or incremental support.

7. Finally, the Bureau affirms that rate-of-return carriers must file five-year plans in 2013. Unlike price cap carriers that may potentially decline to make a state-wide commitment in Phase II and will lose support once an area is auctioned to another provider, the existing support mechanisms will continue to provide funding to rate-of-return carriers. The filing of five-year plans by rate-of-return carriers this year will provide valuable information that will assist the Commission in monitoring the impact of its universal service reforms. In order to monitor progress towards achievement of the Commission's broadband objectives, it is important to develop a baseline understanding of the current state. The five-year plans should describe the carrier's network improvement plan, which should provide

greater visibility into current plans to extend broadband service to unserved locations in rate-of-return service territories.

8. The Commission adopted a more flexible approach for this group of ETCs, allowing them to provide broadband “upon reasonable request.” Rate-of-return carriers must certify that they are taking reasonable steps to offer broadband service in their service area, and that requests for broadband service are met within a reasonable amount of time. We encourage rate-of-return carriers to explain in their five-year plans what criteria the carrier will use to determine whether a request for broadband is reasonable and how the carrier will decide which areas are feasible to extend terrestrial broadband service to, and which areas are not feasible to serve with terrestrial technologies, given current funding levels.

9. The Bureau does not expect a rate-of-return carrier to plan to build out terrestrial wireline broadband service to all locations within its study area. The Commission has recognized that there are some areas of the country where it is cost prohibitive to extend broadband using terrestrial wireline technology, and that in some areas satellite or fixed wireless technologies may be more cost-effective options to extend service. Indeed, we are aware anecdotally that rate-of-return carriers today use a mix of technologies to serve their customers. For that reason, we expect rate-of-return carriers to develop plans that reflect the cost characteristics of their service territories and current funding levels, setting forth what sort of broadband service build-out is reasonable over the five-year time period.

B. Network Performance Testing and Reporting Requirements

10. Discussion. First, the Bureau, pursuant to its delegated authority, revises § 54.313(a)(11). The Bureau agrees with Petitioners that the wording of § 54.313(a)(11) should be modified to more clearly reflect the USF/ICC Transformation Order. Therefore, we delete the final phrase from § 54.313(a)(11), “and the information and data required by this paragraphs (a)(1) through (7) of this section separately broken out for both voice and broadband service.” Consequently, revised § 54.313(a)(11) will state: “The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and

Office of Engineering and Technology.” We move the deleted phrase to paragraph (a) in § 54.313, which will now state: “(a) Any recipient of high-cost support shall provide the following, with the information and data required by paragraphs (a)(1) through (7) of this section separately broken out for both voice service and broadband service.” As the Commission stated in the USF/ICC Transformation Order, collecting this information from ETCs “ensure[s] the continued availability of high-quality voice services and monitor[s] progress in achieving our broadband goals.”

11. Second, the Bureau clarifies that § 54.313(a)(11), as revised, does not apply to competitive ETCs whose support is being phased down, consistent with the language in the USF/ICC Transformation Order. The Commission stated that “[c]ompetitive ETCs whose support is being phased down will not be required to submit any of the new information or certifications ... related solely to the new broadband public interest obligations.”

12. Finally, the Bureau clarifies that no ETCs will be required to begin testing the performance of their broadband networks until after the Bureaus, pursuant to the Commission’s direction, have specified the format and methodology for such testing, and PRA approval for this data collection has been obtained. Because this has not yet occurred, no ETCs will be required to file network performance results with their 2013 annual reports.

13. We decline at this time to address Petitioners’ argument that the Commission should not impose any broadband data reporting requirements under § 54.313(a)(11) on ETCs that are receiving CAF I incremental support or frozen high-cost support. The Bureau will be in a better position to assess the merits of that argument once it has taken further action to define the scope of the requirement.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act

14. Although this document clarifies several existing information collection requirements, it does not contain new or modified information collection requirements subject to the PRA. In addition, therefore, it does not contain any new or modified information collection burden for small business

concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

B. Final Regulatory Flexibility Certification

15. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

16. This Order clarifies, but does not otherwise modify, the USF/ICC Transformation Order. These clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to USF/ICC Transformation Order. Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order, including a copy of this final certification, in a report to Congress pursuant to the SBREFA. In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.

C. Congressional Review Act

17. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

IV. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, pursuant to §§ 0.91, 0.201(d), 0.291, 1.3, and 1.427 of the Commission's rules, 47 CFR 0.91, 0.201(d), 0.291, 1.3, 1.427 and pursuant to the delegation of authority in paragraph 1404 of FCC 11-161, that this Order IS ADOPTED, effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], except for the amendments made to § 54.313(a) in this document, which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date for that section.

19. IT IS FURTHER ORDERED that, pursuant to the authority contained in §§ 0.91, 0.201(d), 0.291, 1.3, 1.427 of the Commission's rules, 47 CFR 0.91, 0.201(d), 0.291, 1.3, 1.427 and pursuant to the delegations of authority in paragraphs 584 and 1404 of FCC 11-161, the petition for clarification and reconsideration or, in the alternative, for waiver, of CTIA – The Wireless Association and the United States Telecom Association, IS GRANTED IN PART, to the extent described herein, and DENIED IN PART, to the extent described herein.

20. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in the Appendix, and such rule amendment shall be effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], except for the amendments made to § 54.313(a) in this document, which contain information collection requirements that are not effective until

approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date for that section.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and record keeping requirements, Telecommunications, Telephone.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief, Wireline Competition Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

Subpart D—Universal Service Support for High Cost Areas

2. Amend § 54.313 by revising paragraph (a) introductory text and paragraph (a)(11) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

(a) Any recipient of high-cost support shall provide the following, with the information and data required by paragraphs (a)(1) through (7) of this section separately broken out for both voice service and broadband service:

* * * * *

(11) Beginning July 1, 2013. The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology.

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